

IP 02-0088-CR 1 B/F USA v Grooms
Magistrate Kennard P. Foster

Signed on 02/14/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. IP 02-88-CR-01 (B/F)
)	
MARK GROOMS,)	
)	
Defendant.)	

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable Sarah Evans Barker, Judge, on January 26, 2006, designating this Magistrate Judge to conduct hearings on the Petition for Summons or Warrant for Offender Under Supervision filed with the Court on January 23, 2006, and to submit to Judge Barker proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). All proceedings were held on February 14, 2006 in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*. Mr. Grooms appeared in person with his appointed counsel, Juval Scott, Office of the Indiana Federal Community Defender. The government appeared by Tim Morrison, Assistant United States Attorney. U. S. Parole and Probation appeared by Dwight Wharton, U. S. Parole and Probation officer, who participated in the proceedings.

On February 14, 2006, the Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. Juval Scott, Office of Indiana Federal Community Defender, was present and appointed by the Court to represent Mr. Grooms in regard to the pending Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Mr. Grooms and his counsel. The Magistrate Judge summarized the specification of the alleged violations and, further, Mr. Grooms and his counsel informed the Court that they had read and understood the specification of violations and waived further reading thereof.

3. Mr. Grooms was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petition.

4. Mr. Grooms would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. Mr. Grooms had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. If the preliminary hearing resulted in a finding of probable cause that Mr. Grooms had violated an alleged condition or conditions of his supervised release set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Barker's designation entered on January 26, 2006.

7. Ms. Scott stated that Mark Grooms would stipulate there is a basis in fact to hold him on the specifications of violation of supervised release set forth in the Petition. Mr. Grooms executed a written waiver of the preliminary examination, which was accepted by the Court.

8. Mr. Grooms, by counsel, stipulated that he committed specifications of violations set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed with the Court as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p>The defendant shall report to the probation officer as directed by the court or probation officer.</p> <p>On January 6, 2006, Mr. Grooms was released from the Volunteers of America (VOA) Community Corrections Center following a 120-day residential placement. This modification was ordered due to his ongoing cocaine usage. Please see Request for Modifying the Conditions of Supervision dated August 19, 2005.</p> <p>Following the defendant's release from VOA, he failed to contact the probation officer by phone or in person. As a result, his live-in girlfriend, Ruby Roberson, was contacted. She was asked when she heard from Mr. Grooms to relay the message for him to report and/or contact the probation officer immediately. On January 12, 2006, Ms. Roberson indicated she had phone contact with the defendant and gave him the probation officer's message.</p> <p>On January 13, 2006, an employment visit was made and a message was left for Mr. Grooms to report and/or contact the probation officer immediately. On that same date, the defendant picked up his last payroll check from his employer. He was advised the probation officer was there earlier looking for him. To date, Mr. Grooms neither called nor reported to the probation officer.</p>
2	<p>The defendant shall notify the probation officer ten days prior to any change in residence or employment.</p> <p>Mr. Grooms' last known address is with his girlfriend, Ruby Roberson, at 4909 East 42nd Street, Indpls., IN 46226. On January 11, 2006, she indicated the defendant was asked to leave her residence. He has not lived with Ms. Roberson since that time and his current whereabouts is unknown.</p> <p>According to the defendant's employer, he has not reported for work since his release from VOA on January 6, 2006. As of January 17, 2006, Mr. Grooms has been terminated due to excessive absenteeism.</p>

He failed to report any change in his employment status to the probation officer.

- 3 **The defendant shall participate in a program of testing and/or treatment for substance abuse and shall pay a portion of the fees of treatment as directed by the probation officer.**

Mr. Grooms is enrolled in weekly substance abuse counseling and random urine collection at VOA. He failed to report for random urine collection on January 14 and 17, 2006. In addition, the defendant has not submitted a urine specimen or reported for substance abuse counseling since leaving VOA on January 6, 2006.

The Court placed Mr. Grooms under oath and directly inquired of Mr. Grooms whether he admitted violation of the specification of his supervised release set forth above. Mr. Grooms stated that he admitted the above violations as set forth. The Court now finds there is a basis in fact for his admissions and accepts same.

Counsel for the parties further stipulated to the following:

- 1) Mr. Grooms has a relevant criminal history category of III, U.S.S.G. §7B1.4(a).
- 2) The most serious grade of violation committed by Mr. Grooms constitutes a Grade C violation, pursuant to U.S.S.G. §7B1.1(b).
- 3) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release, the range of imprisonment applicable to Mr. Grooms is 5 to 11nths.

The parties agreed on the appropriate disposition of the case as follows:

- a. The defendant be sentenced to a period of confinement of nine months to the custody of the Attorney General, to be followed by 24 months of supervised release, with the same conditions previously entered at the time of sentencing.

The Court having heard the evidence and/or arguments of Mr. Grooms, his counsel and the government, now finds that Mr. Grooms violated the specified conditions of supervised release as delineated above in the Petition to Revoke his supervised release.

Mr. Grooms' supervised release is therefore **REVOKED** and he is sentenced to the custody of the Attorney General or his designee for a period of nine months, to be followed by 24 months of supervised release, with the same conditions previously entered at the time of sentencing.

The Magistrate Judge requests that Mr. Wharton, U. S. Parole and Probation Officer, prepare for submission to the Honorable Sarah Evans Barker, Judge, as soon as practicable, a supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

Counsel for the parties and Mr. Harris stipulated in open court waiver of the following:

1. Notice of the filing of the Magistrate Judge's Report and Recommendation;
2. Objection to the Report and Recommendation of the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B); Rule 72(b), *Federal Rules of Civil Procedure*, and S.D.Ind.L.R.72.1(d)(2), *Local Rules of the U.S. District Court for the Southern District of Indiana*.

Counsel for the parties and Mr. Grooms entered the above stipulations and waivers after being notified by the undersigned Magistrate Judge that the District Court may refuse to accept the stipulations and waivers and conduct a revocation hearing pursuant to Title 18 U.S.C. §3561 *et seq.* and Rule 32.1 of the *Federal Rules of Criminal Procedure* and may reconsider the Magistrate Judge's Report and Recommendation, including making a *de novo* determination of any portion of the Report or specified proposed findings or recommendation upon which he may reconsider.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above recommendation revoking Mark Grooms' supervised release and the sentence imposed of imprisonment of nine months in the custody of the Attorney General or his designee, to be followed

by 24 months of supervised release, with the same conditions previously entered at the time of sentencing.

IT IS SO RECOMMENDED this 14th day of February, 2006.

Kennard P. Foster, Magistrate Judge
United States District Court
Southern District of Indiana

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